

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DEREK PHOENIX,

Petitioner,

Case No. 07-cr-20344

v.

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

UNITED STATES OF AMERICA,

Respondent.

**ORDER DISMISSING PETITIONER'S MOTION TO VACATE SENTENCE
PURSUANT TO PETITIONER'S REQUEST, AND CLOSING CIVIL ACTION**

On September 14, 2015, Petitioner Derek Phoenix filed a motion to vacate his sentence under 28 U.S.C. § 2255. *See* ECF No. 39. He argues that pursuant to the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015) (striking down the residual clause of the Armed Career Criminal Act as unconstitutionally vague), his sentence under the residual clause of the career offender provision of the United States Sentencing Guidelines must be vacated. Because Phoenix's petition was second or successive within the meaning of 28 U.S.C. § 2255(h), it was transferred to the Sixth Circuit. *See* ECF No. 53.

On January 19, 2017 the Sixth circuit issued an order authorizing Petitioner to proceed with his second or successive motion. *See* ECF No. 54. The Sixth Circuit further instructed this Court to hold Petitioner's case in abeyance pending the outcome of *Beckles v. United States*, 136 S.Ct. 2510 (2016), but also noted that this Court was free "to consider terminating the stay under appropriate circumstances, either on motion or sua sponte." *Id.* The Petition was therefore reinstated and held in abeyance. *See* ECF No. 56.

On March 6, 2017 the Supreme Court reached a decision in *Beckles*, holding that the sentencing guidelines are not subject to void for vagueness challenges under the Fifth Amendment Due Process clause. *See Beckles v. United States*, No. 15-8544, 2017 WL 855781, at *3 (U.S. Mar. 6, 2017). In response to that opinion, Petitioner Phoenix has moved to withdraw his § 2255 motion through a handwritten and signed request. *See* ECF No. 57. Because Phoenix has knowingly and voluntarily chosen to withdraw his petition, the petition will be dismissed.

It is **ORDERED** that Petitioner Phoenix's motion to vacate sentence under 28 U.S.C. § 2255, ECF No. 39, is **DISMISSED**.

It is further **ORDERED** that the corresponding civil action, *Phoenix v. United States*, 17-cv-10178 (E.D. Mich. Jan. 19, 2017), is **CLOSED**.

Dated: March 20, 2017

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on March 20, 2017.

s/Kelly Winslow for
MICHAEL A. SIAN, Case Manager